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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANIL SAGAR,

Defendant and Appellant.

A150155

(San Mateo County  
Super. Ct. No. 16-NF-007106-A)

Anil Sagar appeals from a judgment of conviction and sentence entered after a jury found him guilty of assault with a deadly weapon. He contends a sentence enhancement imposed for a prior prison term (Pen. Code, § 667.5, subd. (b)) must be stricken, because an enhancement was also imposed for a serious felony (§ 667, subd. (a)(1)).<sup>1</sup> Because the trial court stayed the section 667.5 enhancement, we will affirm.

**I. FACTS AND PROCEDURAL HISTORY**

An amended information alleged that Sagar committed a felony assault with a deadly weapon (§ 245, subd. (a)(1)) and that he had a prior serious felony conviction (§ 667, subd. (a)(1)), a prior strike conviction (§§ 667, subd. (d); 1170.12, subd. (b)), and a prior prison term within the meaning of section 667.5, subdivision (b).

A jury convicted Sagar of assault with a deadly weapon. Sagar waived his right to a jury trial on the enhancements, and the court found the enhancement allegations true.

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<sup>1</sup> All statutory references are to the Penal Code.

The court sentenced Sagar to an aggregate term of 11 years in state prison, as follows: the three-year middle term for assault with a deadly weapon, doubled because of his prior strike conviction pursuant to section 1170.12, subdivision (c)(1); plus a consecutive five years for his prior serious felony conviction (§ 667, subd. (a)(1)). The court also imposed but stayed a one-year sentence for his prior prison term (§ 667.5, subd. (b)). Credits, fines, and fees were ordered as well. This appeal followed.

## II. DISCUSSION

Sagar urges that the one-year prior prison term enhancement under section 667.5, subdivision (b) must be stricken, in light of the five-year serious felony enhancement imposed under section 667, subdivision (a)(1). We disagree.

It is true that a defendant cannot incur sentence enhancements under both section 667, subdivision (a)(1) and section 667.5, subdivision (b) based on the same prior conviction with a prison term: only the longer enhancement applies. (*People v. Jones* (1993) 5 Cal.4th 1142, 1150 [“the most reasonable reading of subdivision (b) of section 667 is that when multiple statutory enhancement provisions are available for the same prior offense, one of which is a section 667 enhancement, the greatest enhancement, but only that one, will apply”].)

When a trial court has imposed both enhancements, some appellate courts have stricken the shorter of the two. (See *People v. Johnson* (2002) 96 Cal.App.4th 188, 209, disapproved on other grounds by *People v. Acosta* (2002) 29 Cal.4th 105, 134, fn. 13; *People v. Perez* (2011) 195 Cal.App.4th 801, 805.)

As this court previously determined, however, where a section 667.5, subdivision (b) enhancement has been found true, the trial court cannot strike it merely because there is a limitation on the imposition of multiple enhancements. (*People v. Brewer* (2014) 225 Cal.App.4th 98, 104 (*Brewer*) [where three-year enhancement under § 667.5, subd. (a) is imposed, one-year enhancement under § 667.5, subd. (b) must be stayed].) After all, rule 4.447(a) of the California Rules of Court provides: “A court *may not* strike or dismiss an enhancement solely because imposition of the term is prohibited by law or exceeds limitations on the imposition of multiple enhancements. Instead, the court must

[¶] . . . [i]mpose a sentence for the aggregate term of imprisonment computed without reference to those prohibitions or limitations; and [¶] . . . [s]tay execution of the part of the term that is prohibited or exceeds the applicable limitation.” (Italics added.) This approach avoids a violation of the prohibition against multiple enhancements while preserving the possibility of imposing the stayed term if the section 667, subdivision (a)(1) enhancement is later reversed. (See *Brewer, supra*, 225 Cal.App.4th at pp. 104–105; *People v. Walker* (2006) 139 Cal.App.4th 782, 794 fn. 9; *People v. Lopez* (2004) 119 Cal.App.4th 355, 364–365.)<sup>2</sup>

Here, the trial court imposed the five-year enhancement pursuant to section 667, subdivision (a)(1) and imposed but stayed the one-year enhancement for Sagar’s prison prior under section 667.5, subdivision (b)). The court complied with *Brewer*.

In his reply brief, Sagar says that *Brewer* was wrong because the cases on which it relied involved different issues. He fails to persuade us that *Brewer* is incorrect or that the stayed enhancement must be stricken.

### III. DISPOSITION

The judgment is affirmed.

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<sup>2</sup> In *Jones*, our Supreme Court ordered the trial court to strike the excess imposed enhancement, but in that case the trial court had not *stayed* the enhancement. *Jones* did not address rule 4.447, or whether the trial court should, in the first instance, stay rather than strike the enhancement it finds true. (*Jones, supra*, 5 Cal.4th at p. 1153; see *Lopez, supra*, 119 Cal.App.4th at p. 364.)

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NEEDHAM, J.

We concur.

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JONES, P.J.

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BRUINIERS, J.

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